

CALIFORNIA ARTS COUNCIL EXHIBIT D – SPECIAL TERMS AND CONDITIONS

Between California Arts Council (hereinafter-called (CAC) and the forenamed Contractor for participation in the CAC's Poetry Out Loud project.

1. STATEMENT OF WORK

Contractor agrees to perform and carry out all services and activities specified in the Exhibit A – Scope of Work and Exhibit B - Budget attached hereto and incorporated herein by this reference.

Contractor may request changes to the scope of work, and budget, dates of contract. Requests for contract amendments must be in writing and approved by the CAC. Contractor shall not implement any such changes until the approval of the amendment has been completed. All changes must be requested before the end of the contract period.

2. CAC CONTRACT RETURN DATE

Standard Agreement with Terms and Requirements attached thereto shall be signed by the Contractor and returned to the CAC within 30 days of the date postmarked.

3. PROJECT MANAGERS

The designated CAC Project Manager shall be the primary contact person during the performance of this contract with the responsibility for facilitating communications and efficient interaction between the CAC and the contractor. The Contractor shall also be responsible for designating a Project Manager. Should a change in the CAC's Project Manager or the Grantee or the Contractor's Project Manager become necessary, the other party shall be notified in writing 15 days prior to the change. The CAC Project Manager shall be Kristin Margolis.

4. COSTS AND PAYMENT

In consideration for the satisfactory performance of Contractor's duties as specified in Exhibit A, the CAC agrees to pay Contractor a sum not to exceed the total amount shown on the Standard Agreement, for items as listed in the Exhibit B – Budget.

Contractor hereby agrees to report financial/expenditure information to CAC, upon such forms as CAC may require. Failure of Contractor to fully, accurately and in a timely fashion comply with CAC's reporting requirements may result in disallowance by CAC of any further payment hereunder.

All supporting documentation will be retained by the grantee and NOT submitted with the invoice unless specifically requested in writing by the CAC.

The final 10 percent of the total contract dollar amount will be withheld pending

completion of the scope of work and receipt of the NEA Survey.

The Contractor is to submit all invoices for reimbursement to the CAC within 90 days after the contract completion date. Invoices received by the CAC after the 90 days may not be paid by the CAC.

Contractor agrees to return all funds that are determined to have been expended on ineligible expenditures or have the ineligible amount deducted from the final invoice.

Budget changes shall not be allowed until receipt of written approval from the CAC.

If travel expenses are included in the approved budget, the State rules governing such expenses shall apply to the Contractor. All travel must be within the State of California to be reimbursable.

5. CAC ACKNOWLEDGEMENT

- a. In order to further the CAC's effort to create brand recognition for the arts in California, the placement of CAC logos is required on all printed matter (programs, catalogs, postcards, posters, newsletters, leaflets, publications, etc.) The Grantee shall display the logos at a size and dimension that assures their visibility and the viewers' comprehension of them.

To download the logo on the

Click "Logos & Downloads"

For assistance in downloading
(916) 322-6582.



web, go to: www.cac.ca.gov

call Webmaster Tom Bergman at

- b. The CAC also requires that the Grantee use the California Arts License Plate graphics on all relevant printed materials. The purpose of which is to assist the CAC with increasing public awareness of the California Arts License Plate and its support for arts in education and local arts programming.



To download the California Arts License Plate graphics off the web, go to:
www.cac.ca.gov

Click "Logos & Downloads"

Use: "California Arts License Plate" logo

For assistance in downloading call Webmaster Tom Bergman at (916) 322-6582.

- c. The CAC requires that the contractor shall include the NEA logo on all printed

materials related to this contract. You may follow the above instructions to download the National Endowment for the Arts logo.



- d. Is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contracts were executed after the determination was made.

This contract is valid and enforceable only if the United States Government makes sufficient funds available to the state for the fiscal year 2006-07 for the purposes of this program. In addition, the Congress may affect the provisions, terms, or funding of this contract in any manner subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute that exacts this contract.

The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

- e. If published, recorded, or visual material (such as in a magazine, film, video, book or brochure) espouses an editorial viewpoint, Grantee must specify in the material that "ANY FINDINGS, OPINIONS, OR CONCLUSIONS CONTAINED HEREIN ARE NOT NECESSARILY THOSE OF THE CALIFORNIA ARTS COUNCIL." (Note: It is not required that the notice appear in uppercase letters.)

Contractor shall also include a statement made to the effect that "THIS PROJECT IS FUNDED IN PART BY THE CALIFORNIA ARTS COUNCIL, A STATE AGENCY AND NATIONAL ENDOWMENT FOR THE ARTS, A FEDERAL AGENCY."

6. NONDISCRIMINATION CLAUSE

During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (i.e. cancer), age (i.e. over 40), marital status, and denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, 129900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if

set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

7. STATEMENT OF COMPLIANCE

Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the bidder has, unless exempted, complied with the nondiscrimination program requirements of Government Code 12990 (a-f); and Title 2, CCR 8103.

8. EXAMINATION AND AUDIT

Contractor shall be subject to the examination and audit of the State Auditor for a period of three years after the termination or completion date stated in the contract.

9. ASSIGNMENT OR TRANSFER

No part of the project relating to this grant shall be assigned, sub-let, or transferred, in whole or in part, without the prior written concurrence of the California Arts Council.

10. TERMINATION

- a. It is mutually agreed that either party may cancel this Contract by giving 30-calendar days advance written notice.
- b. The CAC has the right to require Contractor to stop or suspend work by giving 30-calendar days prior written notice. Within 30 days of such termination, Contractor agrees to furnish the CAC with an itemized accounting of funds expended, obligated and remaining under this contract.
- c. Failure to comply with the terms of this contract may lead to the cancellation of this contract.

11. COST RECORDS

Contractor shall maintain complete, accurate and current records of all income, including obligations incurred with respect thereto. Such records, or xeroxes of such records, shall be kept separate from other cost records. During the duration of the project and for not less than three years after completion or termination of the project, contractor shall make available for examination or audit any books, documents, papers or records pertaining to the project, to the CAC. Upon request by the CAC, the contractor shall furnish at its own expense, legible copies of materials deemed pertinent within 10 working days from receipt of the request.

12. INDEPENDENT CONTRACTOR

Contractor shall not represent to any person, foundation, group, organization or government entity, whether employed by it or not, that it is acting as an agent for the State or that is entitled in any way to act or incur obligations on behalf of the State.

13. FINAL APPROVAL

If required, this Contract is of no force or effect until approved by the State Department of General Services.

14. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing this Contract, Contractor does swear under penalty of perjury that no more than one final unappeasable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court which orders Contractor to comply with an order of the National Labor Relation Board.

15. DRUG-FREE WORKPLACE

By signing this contract, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a) the dangers of drug abuse in the workplace;
 - b) the person's or organization's policy of maintaining a drug-free workplace;
 - c) any available counseling, rehabilitation and employees assistance programs; and
 - d) penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:
 - a) will receive a copy of the company's drug-free policy statement; and,
 - b) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under

the contract or termination of the contract or both and the contractor or grantee may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: (1) the contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above."

16. AMERICANS WITH DISABILITIES ACT OF 1990

By signing this Contract, Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

17. RESOLUTION OF DISPUTES

If Contractor disputes any action by the CAC arising under or out of the performance of this contract, Contractor shall notify the CAC of the dispute in writing and request a claims decision. The CAC shall issue a decision within 30 days of the Contractor's notice. If the Contractor disagrees with the CAC's decision, the Contractor shall submit a formal claim to the Executive Director of the CAC or to the Executive Director's designee.

The decision of the Executive Director or the Executive Director's designee shall be final and conclusive. The decision may encompass facts, interpretations of the agreement, and determinations or applications of law. The decision shall be in writing following an opportunity for the Contractor to present oral or documentary evidence and arguments in support of the claim.

18. FUNDING CONTINGENCY

This Contract is valid and enforceable only if sufficient funds are made available to the CAC by the State for the fiscal year 2006-07 for the purposes of this program.

19. RECYCLING CERTIFICATION

The contractor shall certify in writing under penalty of perjury, the minimum, if not, exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

20. CONFLICT OF INTEREST

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees:

- 1) No officer or employee will engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees:

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency in a policy-making position in the same general subject area as the proposed contract within 12-month period prior to his or her leaving state service.

If Contractor violates any provision of above paragraphs, such action by Contractor shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment for preparatory time and payment for per diem.

21. UNION ORGANIZING

Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- (1) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- (2) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- (3) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- (4) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.
- (5) No state funds disbursed by this grant will be used to assist, promote or deter union organizing.